

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARRY PHILPOT, :
Plaintiff, :
v. : 17 Civ. 5058

UMG RECORDINGS, INC., :
Defendant. :
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COMPLAINT

Plaintiff Larry Philpot (“Philpot”), by his undersigned counsel, for his complaint against defendant UMG Recordings, Inc. (“UMG”), alleges:

Nature of the Action

1. Philpot is bringing this copyright infringement action to obtain damages resulting from the unauthorized copying and public display of Philpot’s photographs of the singers and songwriters (i) Kenny Chesney (the “Chesney Photograph”), (ii) Randy Travis (the “Travis Photograph”), and (iii) Willie Nelson (the “Nelson Photograph”), for which Philpot owns the copyrights (the “Chesney Copyright,” “Travis Copyright,” and “Nelson Copyright,” respectively).

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 and § 1338(a) because they arise under the Copyright Act, 17 U.S.C. § 101 *et seq.*

3. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) because UMG has a place of business in this District.

4. The Court has personal jurisdiction over UMG because UMG is at home in New York.

The Parties to this Action

5. Philpot is a natural person having a place of business at 12527 Winding Creek Lane, Indianapolis, Indiana 46236. Philpot is a professional music photojournalist.

6. Upon information and belief, UMG is a corporation organized and existing under the laws of the State of Delaware, with its principal places of business at 1775 Broadway, New York, New York 10019 and 2220 Colorado Avenue, Santa Monica, CA 90404. At all relevant times, UMG has owned and operated the website located at the URL www.soundslikenashville.com. UMG has also conducted business under the name “Sounds Like Nashville.”

Statement of Facts

A. Philpot’s Ownership of the Photographs

7. Philpot created the Chesney Photograph, a copy of which is attached as Exhibit A.

8. Philpot is the author of the Chesney Photograph, and has, at all times been the sole owner of all right, title, and interest in the Chesney Copyright.

9. Philpot registered the Chesney Copyright, in a collection of photographic works, with the United States Copyright Office. On or about August 21, 2013, Philpot received for those works United States Copyright Registration Number VAu 1-164-624, which is valid and enforceable. A true and correct copy of the certificate of registration is attached as Exhibit B.

10. Philpot created the Travis Photograph, a copy of which is attached as Exhibit C.

11. Philpot is the author of the Travis Photograph, and has, at all times been the sole owner of all right, title, and interest in the Travis Copyright.

12. Philpot registered the Travis Copyright, in a collection of photographic works, with the United States Copyright Office. On or about August 21, 2013, Philpot received for those works United States Copyright Registration Number VAu 1-164-624, which is valid and enforceable. A true and correct copy of the certificate of registration is attached as Exhibit D.

13. Philpot created the Nelson Photograph, a copy of which is attached as Exhibit E.

14. Philpot is the author of the Nelson Photograph, and has, at all times been the sole owner of all right, title, and interest in the Nelson Copyright.

15. Philpot registered the Nelson Copyright, in a collection of photographic works, with the United States Copyright Office. On or about September 5, 2012, Philpot received for those works United States Copyright Registration Number VAu 1-132-411, which is valid and enforceable. A true and correct copy of the certificate of registration is attached as Exhibit F.

B. UMG's Infringing Activities

i. The Chesney Photograph

16. Upon information and belief, in or about 2016, an employee of UMG (i) made a copy of the Chesney Photograph on a computer, (ii) uploaded the Chesney Photograph to the URL http://www.soundslikenashville.com/wp-content/uploads/2016/04/kenny-chesney_Kenny_Chesney_20131-150x150.jpg (the “Chesney URL”), (iii) published an article at the URL <http://www.soundslikenashville.com/artist/kenny-chesney-2/> (the “Chesney Article”), and (iv) using HTML source code, caused the Chesney Photograph at the Chesney URL to appear with the Chesney Article. Upon information and belief, UMG’s purpose in causing the Chesney Photograph to appear with the Chesney Article was to improve the quality of the

website, and encourage users to click on UMG’s content and ads, generating advertising revenue for UMG. A true copy of the Chesney Photograph appearing in the Chesney Article is attached as Exhibit G.

17. Upon information and belief, at all relevant times, UMG has been the registrant for the domain name soundslikenashville.com (the “Domain”), and has owned and controlled the server for the domain name “soundslikenashville.com” (the “Server”).

18. Upon information and belief, UMG never licensed the Chesney Photograph from Philpot, or had Philpot’s permission to copy or display the Chesney Photograph.

19. UMG did not credit Philpot as the author of the Chesney Photograph.

ii. The Travis Photograph

20. Upon information and belief, in or about 2016, an employee of UMG (i) made a copy of the Travis Photograph on a computer, (ii) uploaded the Travis Photograph to the URL http://www.soundslikenashville.com/wp-content/uploads/2016/04/randy-travis_Randy_Travis_2-150x150.jpg (the “Travis URL”), (iii) published an article at the URL <http://www.soundslikenashville.com/artist/randy-travis/> (the “Travis Article”), and (iv) using HTML source code, caused the Travis Photograph at the Travis URL to appear with the Travis Article. Upon information and belief, UMG’s purpose in causing the Travis Photograph to appear with the Travis Article was to improve the quality of the website, and encourage users to click on UMG’s content and ads, generating advertising revenue for UMG. A true copy of the Travis Photograph appearing in the Travis Article is attached hereto as Exhibit H.

21. Upon information and belief, at all relevant times, UMG has been the registrant for the Domain and has owned and controlled the Server.

22. Upon information and belief, UMG never licensed the Travis Photograph from Philpot, or had Philpot's permission to copy or display the Travis Photograph.

23. UMG did not credit Philpot as the author of the Travis Photograph.

iii. The Nelson Photograph

24. Upon information and belief, in or about 2016, an employee of UMG (i) made a copy of the Nelson Photograph on a computer, (ii) uploaded the Nelson Photograph to the URL http://www.soundslikenashville.com/wp-content/uploads/2016/04/willie-nelson_Willie_Nelson_at_Farm_Aid_2009_-_Cropped-150x150.jpg (the "Nelson URL"), (iii) published an article at the URL <http://www.soundslikenashville.com/artist/willie-nelson/> (the "Nelson Article"), and (iv) using HTML source code, caused the Nelson Photograph at the Nelson URL to appear with the Nelson Article. Upon information and belief, UMG's purpose in causing the Nelson Photograph to appear with the Nelson Article was to improve the quality of the website, and encourage users to click on UMG's content and ads, generating advertising revenue for UMG. A true copy of the Nelson Photograph appearing in the Nelson Article is attached hereto as Exhibit I.

25. Upon information and belief, at all relevant times, UMG has been the registrant for the Domain and has owned and controlled the Server.

26. Upon information and belief, UMG never licensed the Nelson Photograph from Philpot, or had Philpot's permission to copy or display the Nelson Photograph.

27. UMG did not credit Philpot as the author of the Nelson Photograph.

A FIRST CLAIM FOR RELIEF
(Infringement of the Chesney Copyright – 17 U.S.C. §§ 106, 501)

28. Philpot incorporates by reference each allegation contained in Paragraphs 1 through 27 above.

29. Philpot owns the Chesney Copyright and the copyright registration for it, which are both valid and enforceable.

30. UMG infringed the Chesney Copyright in at least the following ways.

A. Liability for Reproduction under 17 U.S.C. § 106(1)

31. UMG infringed the Chesney Copyright by reproducing the Chesney Photograph on a hard drive and on the server at the Chesney URL and/or the Chesney Article in violation of 17 U.S.C. § 106(1).

B. Liability for Public Display under 17 U.S.C. § 106(5)

32. UMG infringed the Chesney Copyright by publicly displaying the Chesney Photograph on the Internet at the Chesney URL and/or the Chesney Article in violation of 17 U.S.C. § 106(5).

33. Upon information and belief, the foregoing acts of infringement by UMG were willful and/or in reckless disregard of Philpot's rights.

34. As a direct result of UMG's infringement of the Chesney Copyright, Philpot is entitled, pursuant to 17 U.S.C. § 504(b), to his damages and/or UMG's profits from the infringement.

35. Alternatively, Philpot is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) of up to \$150,000 for the willful infringement of the Chesney Copyright.

A SECOND CLAIM FOR RELIEF
(Infringement of the Travis Copyright – 17 U.S.C. §§ 106, 501)

36. Philpot incorporates by reference each allegation contained in Paragraphs 1 through 35 above.

37. Philpot owns the Travis Copyright and the copyright registration for it, which are both valid and enforceable.

38. UMG infringed Philpot's Travis Copyright in at least the following ways.

A. Liability for Reproduction under 17 U.S.C. § 106(1)

39. UMG infringed the Travis Copyright by reproducing the Travis Photograph on a hard drive and on the server at the Travis URL and/or in the Travis Article in violation of 17 U.S.C. § 106(1).

B. Liability for Public Display under 17 U.S.C. § 106(5)

40. UMG infringed the Travis Copyright by publicly displaying the Travis Photograph on the Internet at the Travis URL and/or the Travis Article in violation of 17 U.S.C. § 106(5).

41. Upon information and belief, the foregoing acts of infringement by UMG were willful and/or in reckless disregard of Philpot's rights.

42. As a direct result of UMG's infringement of the Travis Copyright, Philpot is entitled, pursuant to 17 U.S.C. § 504(b), to his damages and/or UMG's profits from the infringement.

43. Alternatively, Philpot is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) of up to \$150,000 for the willful infringement of the Travis Copyright.

A THIRD CLAIM FOR RELIEF
(Infringement of the Nelson Copyright – 17 U.S.C. §§ 106, 501)

44. Philpot incorporates by reference each allegation contained in Paragraphs 1 through 43 above.

45. Philpot owns the Nelson Copyright and the Copyright registration, which are both valid and enforceable.

46. UMG infringed Philpot's Nelson Copyright in at least the following ways.

A. Liability for Reproduction under 17 U.S.C. § 106(1)

47. UMG infringed the Nelson Copyright by reproducing the Nelson Photograph on a hard drive and on the server at the Nelson URL and/or in the Nelson Article in violation of 17 U.S.C. § 106(1).

B. Liability for Public Display under 17 U.S.C. § 106(5)

48. UMG infringed the Nelson Copyright by publicly displaying the Nelson Photograph on the Internet at the Nelson URL and/or the Nelson Article in violation of 17 U.S.C. § 106(5).

49. Upon information and belief, the foregoing acts of infringement by UMG were intentional and/or in reckless disregard of Philpot's rights.

50. As a direct result of UMG's infringement of the Nelson Copyright, Philpot is entitled, pursuant to 17 U.S.C. § 504(b), to his damages and/or UMG's profits from the infringement.

51. Alternatively, Philpot is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) of up to \$150,000 for the willful infringement of the Nelson Copyright.

WHEREFORE, Philpot respectfully requests judgment as follows:

A. That UMG be adjudged to have infringed upon Philpot's copyrights in the Chesney Photograph, Travis Photograph, and Nelson Photograph in violation of 17 U.S.C. § 106;

B. That Philpot be awarded the greater of (a) Philpot's actual damages and/or UMG's profits attributable to its infringement of Philpot's copyrights, or (b) alternatively, statutory damages of up to \$150,000 per work, pursuant to 17 U.S.C. § 504, the precise amount to be determined by the trier of fact in this action;

C. That UMG and its officers, directors, employees, agents, representatives, affiliates, subsidiaries, distributors, licensees and all persons or entities acting in concert or

participation with it, be enjoined from infringing the Chesney Photograph, Travis Photograph, and Nelson Photograph pursuant to 17 U.S.C. § 502;

D. That Philpot be awarded his costs, including attorneys' fees, pursuant to 17 U.S.C. § 505; and

E. That Philpot be granted such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Philpot hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: New York, New York
July 5, 2017

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